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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,891	11/04/2003	Mayu Yamada	244823US90	3487
22850	7590	09/05/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER SAFAIPOUR, BOBBAK	
			ART UNIT 2618	PAPER NUMBER
			NOTIFICATION DATE 09/05/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,891	<b>Applicant(s)</b> YAMADA ET AL.	
	<b>Examiner</b> BOBBAK SAFAIPOUR	<b>Art Unit</b> 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,6,9 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2,5-6,9,12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Action is in response to Applicant's response filed on 5/27/2008. Claims 3-4, 7-8, and 10-11 have been cancelled. **Claims 1-2, 5-6, 9, and 12-14** are still pending in the present application. **This action is made FINAL.**

### ***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive.

In the present application, Applicant argues that Hayama fails to teach "holding layered data and a corresponding absolute radio resource amount required for transmitting the layered data" and "comparing area resource information indicating a currently available absolute radio resource amount for respective radio areas covered by base station with the absolute radio resource amount held in the holding unit, and to determine, from layered data of a highest layer, at least one layered data of which the absolute radio resource held in the holding unit satisfies the currently available absolute radio resource amount."

Examiner respectfully disagrees. First, the Examiner respectfully notes that claims 1, 2, 6, and 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. (see 35 USC § 112 rejection below)

Second, the Examiner respectfully disagrees with the Applicant's arguments stated above. Hayama provides an information delivery system which may vary an information amount and

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the quality of service received by the use according to the radio circumstances of the mobile station as considering any interference to be given to another communication in the multicast or broadcast information delivery in which the same information is delivered to all users (read as compare area resource information) That is, the information delivery system may be designed so that the mobile station under the bad wave circumstances enables to deliver the information with the highest priority to be inevitably delivered (read as from layered data of a highest layer), while the mobile station under the good wave circumstances enables to receive the information with the higher priority and the additional information (also read as from layered data of a highest layer). (col. 1, lines 44-67; col. 3, lines 1-43; read as based on area resource information)

Hayama discloses data arrangement of an information database located inside a contents server. The information database (read as holding unit) includes multimedia information such as a still picture, voice, and a moving picture. The multimedia information is managed on the information unit to be delivered to the mobile station at a time. (figure 2; col. 5, lines 29-48) The information database is composed of delivery informations, such as news or a still picture to be delivered to the mobile station at a time (read as at least one layered data of which the absolute radio resource held in the holding unit satisfies the currently available absolute radio resource). Likewise, the accounting is performed on the information unit like the delivery information to be delivered to the mobile station at a time. It means that the response to one transmission request or one program request from the mobile station is defined as one unit. The delivery information includes the information pieces layered according to the significance or the priority of each information piece. Each of these layers has an ID for identifying which information is associated and a header for indicating the priority. (figure 2; col. 5, lines 29-48)

In the contents editor, the highest significance or priority is assigned to the information to be positively to the user. The other informations are layered as the additional information and are accumulated in the information database. If the layer has a header with a digit of "1", it means that the highest significance is given to the layer. As the digit of the header is made higher, the significance is made lower. That is, according to the wave circumstances of the mobile station, the mobile station may receive only the layer with the highest significance or priority or may receive the layer with the highest significance or priority and one or more additional information layers (read as layered data of the highest layer). In the information delivery system according to this embodiment, with an example of the delivery information, the layer 1 is assumed to be the layer having the information with the highest significance or priority. As the digits added to the layers are made higher such as in the sequence of the layer 2, the layer 3 and the layer 4, the significance or priority is made lower. In this embodiment, all the layers except the layer 1 are collectively called additional information. (figure 2; col. 5, lines 49-67)

It has been shown that cited claim language is taught in Hayama. If the Applicant intends to differentiate between the present application and the Hayama reference, then such differences should be made explicit in the claims. Furthermore, the amendments made to the present application has raised issues with regards to the written description requirement (see 35 U.S.C. 112 rejection below). Appropriate corrections are required to overcome the 35 U.S.C. 112 rejection). As a result, the argued features are written such that they read upon the cited references.

***Claim Rejections - 35 USC § 112***

**Claims 1, 2, 6 and 12** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant's have cited page 12, lines 9-31 and figure 4 of the present application to disclose the subject matter in the amendments made to claims 1, 2, 6 and 12. However, upon further examination of page 12, lines 9-31 and figure 4 and the entire specification, the Examiner has not found any teaching of an "absolute" radio resource, as claimed in the independent claims. On page 7 of the remarks page, Applicant's has indicated that "transmission data management unit 24 of the radio network controller 20 is capable of determining which layers of data should be sent to a base station 10 for subsequent transmission to a mobile station 30 based on ***absolute*** resource information corresponding to the radio area 40 served by the base station and stored ***absolute resource information*** 24a corresponding to the resources required for transmitting the layered data" with emphasis made to the absolute radio resource information. Again, upon further review of the cited passages, Hayama is mute with regards to absolute resource information.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-2, 5-6, 9, and 12-14** are rejected under 35 U.S.C. 102(e) as being anticipated by **Hayama et al (US 7,006,484)**.

Consider **claim 1**, Hayama et al disclose a mobile communication system comprising:

- a holding unit configured to hold layered data and a corresponding absolute radio resource amount required for transmitting the layered data (figure 2; col. 5, lines 29-48);
- a determination unit configured to compare area resource information indicating a currently available absolute radio resource amount for respective radio areas covered by base station with the absolute radio resource amount held in the holding unit, and to determine, from layered data of a highest layer, at least one layered data of which the absolute radio resource held in the holding unit satisfies the currently available absolute radio resource amount (figure 2; col. 1, lines 44-67; col. 3, lines 1-43; and col. 5, lines 29-67)
- a radio transmitter configured to transmit the at least one layered data determined by the determination unit from the base station to the mobile stations (col. 2, lines 12-13).

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Consider **claim 2**, Hayama et al disclose a radio network controller comprising:

a holding unit configured to hold layered data and a corresponding absolute radio resource amount required for transmitting the layered data (figure 2; col. 5, lines 29-48);

a determination unit configured to compare area resource information indicating a currently available absolute radio resource amount for respective radio areas covered by base station with the absolute radio resource amount held in the holding unit, and to determine, from layered data of a highest layer, at least one layered data of which the absolute radio resource held in the holding unit satisfies the currently available absolute radio resource amount (figure 2; col. 1, lines 44-67; col. 3, lines 1-43; and col. 5, lines 29-67) and

a data transmitter configured to transmit the at least one layered data determination by the determination unit to the respective base stations (col. 2, lines 12-13).

Consider **claim 6**, Hayama et al disclose a base station comprising:

a holding unit configured to hold layered data and a corresponding absolute radio resource amount required for transmitting the layered data (figure 2; col. 5, lines 29-48);

a determination unit configured to compare area resource information indicating a currently available absolute radio resource amount for respective radio areas covered by base station with the absolute radio resource amount held in the holding unit, and to determine, from layered data of a highest layer, at least one layered data of which the absolute radio resource held in the holding unit satisfies the currently available absolute radio resource amount (figure 2; col. 1, lines 44-67; col. 3, lines 1-43; and col. 5, lines 29-67)



a radio transmitter configured to transmit the at least one layered data determined by the determination unit from the base station to the mobile stations (col. 2, lines 12-13).

Consider **claim 12**, Hayama et al disclose a communication method used in mobile communication system which comprises a holding unit configured to hold layered data and a corresponding absolute radio resource amount required for transmitting the layered data (figure 2; col. 5, lines 29-48), the communication method comprising;

a determination unit configured to compare area resource information indicating a currently available absolute radio resource amount for respective radio areas covered by base station with the absolute radio resource amount held in the holding unit, and to determine, from layered data of a highest layer, at least one layered data of which the absolute radio resource held in the holding unit satisfies the currently available absolute radio resource amount (figure 2; col. 1, lines 44-67; col. 3, lines 1-43; and col. 5, lines 29-67) and

transmitting the at least one layered data determined in the determining step to the mobile stations (col. 2, lines 12-13).

Consider **claim 5**, and **as applied to claim 2 above**, Hayama et al disclose the claimed invention wherein a resource information receiver configured to receive the area resource information from the base stations, wherein the determination unit is configured to determine the at least one layered data based on the area resource information received by the resource information receiver (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37).

Consider **claim 9**, and **as applied to claim 6 above**, Hayama et al disclose the claimed invention wherein a resource information collection unit configured to collect the area resource information, wherein the determination unit is configured to determine the at least one layered data, based on the area resource information collected by the resource information collection unit (figures 2-4, 7A-7D; col. 2, lines 1-13, 25-43; col. 5, line 49 to col. 6, line 37).

Consider **claim 13**, and **as applied to claim 2 above**, Hayama et al disclose the claimed invention wherein the area resource information is at least one of radio resources capacity for the respective radio areas covered by the base stations and radio resources amount currently available for the respective radio areas. (figures 2-4, 7A-7D; col. 1, lines 44-67; col. 2, lines 1-13, 25-43; col. 3, lines 1-43; col. 5, line 49 to col. 6, line 37)

Consider **claim 14**, and **as applied to claim 10 above**, Hayama et al disclose the claimed invention wherein the area resource information is at least one of radio resources capacity for the respective radio areas covered by the base station and radio resources amount currently available for the respective radio areas. (figures 2-4, 7A-7D; col. 1, lines 44-67; col. 2, lines 1-13, 25-43; col. 3, lines 1-43; col. 5, line 49 to col. 6, line 37)

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

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Any inquiry concerning this communication or earlier communications from the

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Examiner should be directed to Bobbak Safaipour whose telephone number is (571) 270-1092.

The Examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Matthew Anderson can be reached on (571) 272-4177. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

/Bobbak Safaipour/

Examiner, Art Unit 2618

August 29, 2008

/Matthew D. Anderson/

Supervisory Patent Examiner, Art Unit 2618